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BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS

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ON THE BILATERAL INVESTMENT TREATY WITH RWANDA

Mr. Chairman, thank you for the opportunity to testify before the Foreign Relations Committee as the Administration seeks advice and consent of the Senate to ratification of the United States-Rwanda Bilateral Investment Treaty (BIT).

Foreign investment is an important source of economic growth in the United States and around the globe. It improves productivity, provides good jobs, and spurs healthy competition. Foreign investment is a platform for U.S. exports. In 2007, 22 percent of U.S. goods exports were shipped to foreign subsidiaries of U.S. firms. Foreign investment can also be a powerful tool for economic development. BITs play an important role by establishing rules that protect the rights of U.S. investors abroad and provide market access for future U.S. investment. Since the inception of the U.S. BIT program in the early 1980s, successive U.S. Administrations have negotiated BITs with the objective of protecting U.S. investment abroad, encouraging the adoption of open, transparent, and non-discriminatory investment policies, and supporting the development of international legal standards consistent with these objectives. U.S. BITs build on the principles contained in earlier U.S. treaties of Friendship, Commerce, and Navigation. The United States presently is a party to BITs with forty countries. Five of these treaties are with sub-Saharan African countries, although the BIT with Rwanda is the first such treaty signed by the United States with a sub-Saharan African country in almost a decade.[1]

The United States chose to negotiate a BIT with Rwanda in part based on its strong economic reform program, which has helped to rebuild the Rwandan economy since the 1994 genocide. The Rwandan government has opened its economy, improved its business climate, and embraced trade and investment as a means to boost economic development and help alleviate poverty. In 2008-2009, Rwanda was the world's most improved country in the World Bank's review of "doing business" reforms – a first for a sub-Saharan African country. The report cited Rwanda's progress in areas such as reducing the time necessary to start a business, making it easier to obtain credit, and providing rules to facilitate trade and the registration of property. Rwanda also maintains a consistent policy of combating corruption.

As the result of these reforms, foreign investors are increasingly giving Rwanda serious consideration as a destination for investment. According to our Embassy, U.S.-led investment in

[1] The other U.S. BITs with sub-Saharan African countries are with: Cameroon, the Democratic Republic of Congo, Mozambique, the Republic of Congo, and Senegal.

Rwanda is poised to grow from less than $50 million pre-2008 to more than $600 million in three to five years. These investments could increase access to energy significantly for Rwandans and their regional neighbors, expand the number of Rwanda university-educated students from the thousands to the tens of thousands, and provide low-cost "green" housing for middle income Rwandans. U.S. investment has the potential to change Rwanda's economic landscape and play a significant role in assisting the Rwandan government's efforts to become an economic hub for Central Africa. The BIT with Rwanda, once in force, would reinforce the Rwandan government's efforts to further reform its economy and promote a strong business climate. It would also set a very positive example in the region.

The Department of State and the Office of the U.S. Trade Representative co-led the negotiation of this treaty, with the participation of the Departments of Commerce, the Treasury, and other U.S. government agencies. The treaty, which was signed on February 19, 2008, adheres closely to the text of the 2004 U.S. model BIT. As such, it contains a set of core investor protections, which include:

- national treatment and most-favored nation treatment for the full life cycle of investment, including in the establishment, acquisition, operation, management, and ultimate disposition of an investment;
- the free transfer of investment-related funds;
- prompt, adequate, and effective compensation in the event of an expropriation;
- a minimum standard of treatment grounded in customary international law;
- freedom of investment from specified performance requirements;
- prohibitions on nationality-based restrictions for the hiring of senior managers; and
- provisions on transparency in publication of investment-related laws, regulations, and other measures, and the opportunity, to the extent possible, for interested parties to comment on such proposed measures.

The Treaty also provides investors with the opportunity to resolve investment disputes with a host government through international arbitration.

This investment treaty is based on the 2004 U.S. model BIT, which, compared to earlier BITs, includes a number of provisions designed to improve the operation of the treaty. These developments include greater specificity with respect to key substantive provisions, and rules of procedure designed to eliminate frivolous claims and to enhance efficiency, transparency, and public participation in the arbitration process. The Parties also recognize in the Treaty that it would be inappropriate to encourage investment by weakening or reducing the protections afforded in domestic environmental and labor laws. Under the model, each Party may take limited exceptions to the core obligations related to national treatment, most-favored nation treatment, performance requirements, and senior management and boards of directors. In this area, Rwanda has taken only a few, narrow exceptions; the treaty thus sends a powerful signal about Rwanda's openness to foreign investment.

In sum, this treaty will complement Rwanda's reform efforts, help Rwanda attract more foreign investment that is vital to economic prosperity, and deepen our economic relationship with an important partner in Africa.

Looking ahead, the Administration is interested in exploring possibilities for new U.S. BITs in Africa. On August 5th, at an event during the African Growth and Opportunity Act Forum in Nairobi, Secretary of State Clinton and U.S. Trade Representative Kirk announced that the United States would start negotiations toward a BIT with Mauritius. Mauritius is another partner in sub-Saharan African that has taken serious steps to enact reforms and improve its business climate. At that time, Secretary Clinton echoed President Obama's call to do more to promote investment in Africa, and commented that the launch of negotiations with Mauritius is in keeping with our broader interest in engaging other potential BIT partners in Africa.

In conclusion, the Administration wishes to thank the Committee for its consideration of the Treaty and we urge you to report it favorably to the full Senate for action. I would be happy to answer any questions you may have.